

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
APR 16 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RAYMOND EARL RIGSBY,)	
)	
Petitioner/Appellant,)	2 CA-HC 2008-0002
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
ROBERT STEWART, WARDEN, and)	Rule 28, Rules of Civil
THE ARIZONA DEPARTMENT OF)	Appellate Procedure
CORRECTIONS,)	
)	
Respondents/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200800656

Honorable Robert Carter Olson, Judge

APPEAL DISMISSED

Raymond Earl Rigsby

Florence
In Propria Persona

Terry Goddard, Arizona Attorney General
By Paul E. Carter

Tucson
Attorneys for Respondents/Appellees

E S P I N O S A, Judge.

¶1 Raymond Earl Rigsby appeals from the trial court’s judgment denying his petition for a writ of habeas corpus. Although we initially denied the state’s motion to dismiss the appeal, we have considered the matter again with the benefit of the parties’ full briefing on appeal and the entire record. Because the notice of appeal is untimely, we conclude we lack jurisdiction over the appeal and, therefore, dismiss it without addressing the merits of the issues raised.

¶2 The trial court dismissed Rigsby’s petition on June 30, 2008, in an unsigned minute-entry order entered the same day. According to Rigsby, he mailed his notice of appeal on August 1, 2008, more than thirty days later.¹ In order to confer jurisdiction on this court, a notice of appeal must be filed within thirty days of a final judgment. Ariz. R. Civ. App. P. 9(a); *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971) (“It is settled in Arizona that the perfecting of an appeal within the time prescribed is jurisdictional; and, hence, where the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the attempted appeal.”); *see also Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (pro per litigants “held to the same familiarity with required procedures . . . as would be attributed to a duly qualified member of the bar”). Although the court had

¹The mail logs from Rigsby’s prison unit that are attached to the state’s motion to dismiss this appeal show Rigsby provided one piece of law-related mail to prison staff on July 31, 2008, and three pieces of law-related mail on August 1, 2008. A prisoner’s notice of appeal is deemed filed when he gives it to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 270-71 (1988); *Mayer v. State*, 184 Ariz. 242, 243-44 (App. 1995). Even if filed on July 31, however, Rigsby’s notice was still outside the thirty days required by Rule 9(a), Ariz. R. Civ. App. P.

signed and entered a form of judgment on July 31, which Rigsby incorporated in an amended notice of appeal, the court’s June 30 order denying relief was a final judgment. *See* Ariz. R. Civ. P. 58(f) (“A judgment in habeas corpus proceedings need not be signed, and shall be final when entered in the minutes of the court.”); *see also Sims v. Ryan*, 181 Ariz. 330, 332, 890 P.2d 625, 627 (App. 1995). The signed judgment the court subsequently entered in accordance with its minute-entry ruling did not extend Rigsby’s time to appeal. *Cf. James v. State*, 215 Ariz. 182, ¶¶ 17-21, 158 P.3d 905, 909-10 (App. 2007) (appeal time not extended when appellant had not filed a motion specified in Rule 9(b), Ariz. R. Civ. App. P., and trial court had neither vacated nor amended original judgment).

¶3 Accordingly, Rigsby’s appeal is dismissed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge